M. W. CASAGRANDA

IBLA 84-439 Decided September 21, 1984

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. NM-A 57560 (OK).

Affirmed as modified and remanded.

1. Oil and Gas Leases: Applications: Drawings

> Where Part A of an automated simultaneous oil and gas lease application is not submitted with Part B and is not on file at the time of receipt of Part B, i.e., by the end of the filing period for applications, BLM may properly declare the lease application to be unacceptable, even where it was erroneously included in the lease drawing.

APPEARANCES: George J. Darr, Esq., Boulder, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

M. W. Casagranda has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated March 12, 1984, rejecting his simultaneous oil and gas lease application, NM-A 57560 (OK).

Appellant's lease application was drawn with first priority for parcel NM-250 in the July 1983 simultaneous oil and gas lease drawing. In its March 1984 decision, BLM rejected appellant's application because Part A of the application (form 3112-6 (June 1981)) was not submitted with appellant's Part B or on file with BLM at the time appellant submitted Part B (form 3112-6a (June 1981)) in connection with the August 1983 drawing.

In his statement of reasons, appellant contends that he had filed Part A of his application with BLM in a "timely manner." Appellant submits an affidavit, dated May 2, 1984, in which he states that he mailed a completed Part A to the appropriate BLM office, in the "last week of May, 1983," that there was a return address on the envelope, and that the envelope has never been returned to that address. Appellant concludes that this raises a presumption that it was received by BLM, as the envelope containing the document was not returned, citing Stark Lumber Co. v. Keystone Investment Co., 20 P.2d 306 (Colo. 1933). Appellant further states that "[t]he particular Part A in question in this appeal is dated by the Bureau of Land Management in November

of 1983. That evidence is non-conclusive and rebutted by the fact that petitioner made no other mailings of Part A's to the Bureau of Land Management." Appellant also argues that BLM should be estopped from rejecting his application where Part B of his application was included in the drawing and he was given no notice at the time of acceptance of Part B that a Part A was not on file.

In response to a request by the Board the Wyoming State Office, BLM, forwarded a photocopy of appellant's Part A under cover of a letter dated August 1, 1984. That letter explained the manner in which Part A forms are processed:

> After the close of a filing period, applications are processed through the Optical Mark Reader (OMR) to transfer the data from the applications onto the computer. Because single Part A forms may be submitted at any time, we delay the processing of those Part A forms until the very end of our data capture phase. Thus, for the Casagrandas' Part A forms to have been processed with September 1983 applications they would have to reach our office sometime after August 23, 1983, the last day of data capture for the July 1983 drawing.

[1] We have held recently that, where Part A of a simultaneous oil and gas lease application is not on file with BLM at the time Part B is filed or submitted with Part B, BLM may properly declare the lease application unacceptable in accordance with 43 CFR 3112.3(a) (49 FR 2113 (Jan. 18, 1984)). 1/ See Satellite Energy Corp., 77 IBLA 167, 90 I.D. 487 (1983). Part A of the application provides information identifying the applicant in machine readable form and is coordinated with any Part B which an applicant files in a subsequent drawing. Failure to submit Part A prevents the automated processing of the application. Judy Fleming, 81 IBLA 290 (1984); James R. Taylor, 80 IBLA 157 (1984). Where a Part A is not on file with BLM, a Part B filed in a particular drawing cannot be automatically processed because the necessary identifying information regarding the applicant is not available. For this reason, appellant's lease application must be considered unacceptable under the regulations and cannot be afforded priority with respect to parcel NM-250, even though appellant's Part B was included in the July 1983 drawing. Howell Roberts Spear, 80 IBLA 150 (1984); Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984). 2/

1/ The cited regulation provides that: "Any Part B application form shall be deemed unacceptable and a copy returned if, in the opinion of the authorized officer, it: * * * (2) Is received in an incomplete state or prepared in an improper manner that prevents automated processing * * *." 43 CFR 3112.3(a) (49 FR 2113 (Jan. 18, 1984)).

2/ We are aware that BLM actually rejected appellant's lease application. However, as we stated in James R. Taylor, supra at 159: "[U]nder the regulations the proper action in this case is a finding of unacceptabil-ity." Where an application is unacceptable, unlike where it is subject to rejection, BLM is required to return all filing fees after assessment of a $75 processing fee. Shaw Resources, Inc., supra at 176, 91 I.D. at 135; see 43 CFR 3112.3(b), as amended at 49 FR 2113 (Jan. 18, 1984).

Appellant contends that his Part A was sent to BLM, and, because the letter was not returned to him, it must be presumed to have been received in a timely manner. In this context, two presumptions come into play. One is the presumption of regularity which supports the official acts of public officers in the proper discharge of their official duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976). Therefore, it is presumed that BLM employees have not lost or misplaced documents filed with them. S. H. Partners, 80 IBLA 153 (1984). We also recognize the presumption that mail properly addressed, stamped, and deposited in an appropriate receptacle is duly delivered. Donald E. Jordan, 35 IBLA 290 (1978). Nevertheless, where the two presumptions are in conflict, as in the present case, we accord greater weight to the presumption of regularity. David F. Owen, 31 IBLA 24 (1977). This is done because of the strong public interest in being able to rely on BLM records and because "granting priority to the presumption of mailing would result in a virtually conclusive presumption whereas affording precedence to the presumption of regularity would be far easier to rebut." Bernard S. Storper, 60 IBLA 67, 71 (1981), aff'd, Storper v. Watt, Civ. No. 82-0449 (D.D.C. Jan. 20, 1983).

The presumption of regularity may be rebutted by sufficient probative evidence that the particular document in contention was not only transmitted but actually received by BLM. S. H. Partners, supra. However, an uncorroborated statement, in the form of an affidavit, to the effect that a document was transmitted to BLM is not sufficient to overcome the inference that the document was not filed. This inference is drawn from the absence of the document in the file and the practice of BLM to properly handle filings of legally operative documents. H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). In order for us to accept appellant's contentions we must conclude that appellant's Part A had been lost in BLM's office for a period of approximately 3 months. Without further support for his allegation, such as a return receipt card showing the date that Part A was received by the Wyoming State Office, BLM, we find that the evidence more logically supports the determination that Part A was not received until after August 23, 1983. Thus, we conclude that appellant has not overcome the presumption that BLM did not receive a Part A from appellant until after August 23, 1983. The filing period for the drawing in issue closed July 22, 1983. Therefore, at the time appellant filed Part B of his lease application, a Part A was not on file and BLM could properly have declared the lease application unacceptable. In that appellant's application is unacceptable rather that rejectable, BLM is instructed, in accordance with Shaw Resources, Inc., supra, to return appellant's filing fees, minus $75. Tillman V. Jackson, 80 IBLA 225 (1984).

As previously noted, appellant also argues that BLM should have notified him at the time of acceptance of Part B of his lease application that Part A was not on file and that BLM is thereby estopped to reject his application. This argument presumes that appellant could have corrected the omission, if he had been so notified. Where Part B of appellant's application was received by BLM, with no accompanying Part A, and there was no Part A on file, it is deemed to have been "prepared in an improper manner which prevents automated processing." 43 CFR 3112.3(a) (49 FR 2113 (Jan. 18, 1984)). As such, the regulations require that the application be deemed unacceptable. The regulations do not permit submittal of a Part A after the effective date of receipt

of the Part B portion of his application. 3/ There is simply no basis for estoppel to lie against BLM. In order for estoppel to apply there must be an affirmative misrepresentation or an affirmative concealment of a material fact, and appellant has shown none. See United States v. Ruby, 588 F.2d 697 (9th Cir. 1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified and the case is remanded to BLM for refund of appellant's filing fees, less $75, as directed by this opinion.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

3/ The date of receipt of Part B would be the last day of the filing period, when all applications are deemed to have been simultaneously filed. Thus, we believe that an applicant would have the filing period, in this case July 1 to July 22, 1983, in which to submit Part A of his application and to have it treated as having been filed with Part B.